Dispute Resolution Services

A matter regarding Northern Properties Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of his security deposit. Despite the fact that the tenant personally served the secretary of the corporate landlord with the application for dispute resolution and notice of hearing on July 12, the landlord did not participate in the conference call hearing.

At the hearing, the tenant withdrew his claim for the return of the security deposit as the landlord had returned it to him.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant's undisputed testimony is as follows. The tenancy began in June 2010 and ended on July 3, 2013. The tenant paid $830.00 in rent on the first of each month through a direct deposit into the landlord's account.

The tenant testified that in the last 3 months of his tenancy, he experienced a sewage backup approximately every 4 days. Sometimes the backup consisted of an overwhelming odour and sometimes sewage would come up through the drain in the sink. Each time this occurred, the tenant would inform maintenance personnel who would address the problem.

In the last few weeks of the tenancy, the tenant was unable to reside in the unit due to the pervasive odour.

The tenant's rent was automatically withdrawn on July 1 and on July 3, yet another sewage backup occurred, which proved to be the last straw for the tenant. He gave the landlord a written notice that he was ending his tenancy immediately due to the ongoing sewage issues.

The tenant testified that he was committed to a fixed term tenancy which was to expire in August 2013.

The tenant seeks to recover the $830.00 in rent paid for the month of July, $270.00 for each of the months of July and August which represents the difference in rent between the rental unit and his new residence and the costs associated with moving as well as the filing fee paid to bring his application.

Analysis

In the absence of testimony from the landlord, I accept the tenant's testimony as credible and factual. I find that the landlord breached a material term of the tenancy by failing to maintain the residential property in a state of repair that complies with health, safety and housing standards required by law and I find that the tenant was justified under section 45(3) to end the tenancy early.

I find that the tenant is entitled to recover the $830.00 in rent paid for the month of July and I award him that sum. I further find that the tenant had to pay a higher rent for the balance of the fixed term than he had expected to pay and that he suffered this loss because of the landlord's breach of their obligation under the tenancy agreement. I find that the tenant is entitled to recover the $270.00 rent differential for the month of July and an additional $270.00 for the differential for the month of August and I award him those amounts.

I dismiss the tenant's claim for the costs associated with moving as the fixed term would have ended at the end of August and those costs would have been incurred in any event.

As the tenant has been substantially successful in his claim, I find that he should recover the $50.00 filing fee and I award him that sum.

Conclusion

The tenant is awarded a total of $1,420.00 which represents $830.00 for July rent, $270.00 for the rent differential for July, $270.00 for the rent differential for August and $50.00 for the filing fee. I grant the tenant a monetary order under section 67 for

$1,420.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act.*

Dated: October 18, 2013

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Residential Tenancy Branch